IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl.M.C. No.868/2004

M/s.Terumo Penpol Ltd. & Ors. ... Petitioners
! through: Ms.Reena George

VERSUS

$ The NCT of Delhi & Anr. ... Respondents
^ through: None.

% **D**ATE OF DECISION: 04.10.2007

CORAM:
* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment? Y

2. To be referred to the Reporter or not? Y

3. Whether judgment should be reported in Digest? Y

: PRADEEP NANDRAJOG, J.

1. Petitioners have been impleaded as accused in a complaint filed by the second respondent under Section 156 (3) Cr.P.C. alleging that petitioners have committed an offence under Section 499/500 IPC. Petitioners pray that the said complaint being complaint case No. 1183/1/2003 titled *J.Mitra & Co. Vs. Terumo Penpol Ltd. & Anr.* be quashed.

2. Gravement of the allegations against the petitioners culled out from the complainant is that the complainant and first petitioner were competitors in the same business i.e. manufacturing and supplying blood bags. A tender was floated

by the Delhi State Aids Control Society, Government of NCT Delhi. Pursuant thereto complainant and first petitioner had submitted offers and in support of their respective products had furnished the requisite literature. The tender inquiry pertained to supply of blood bags. Along with the literature submitted with the offer, first petitioner had submitted a graph under the caption:- "Is venepuncture comfortable for your donor?" Said graph illustrated that the result of a needle penetration test pertaining to the product of the complainant was 26.4 on a scale of 45 and pertaining to the product of first petitioner was 16.8. It was alleged that by showing the product of the complainant inferior to that of the first petitioner, the accused had defamed the complainant.

3. The venepuncture comfort in relation to needle penetration test needs to be understood and explained at this juncture.

4. Prick by a needle is painful and the measure of pain is determined by how effectively and conveniently the needle punctures the skin. The venepuncture comfort penetration test purportedly evidences that lesser is the value on the scale, more comfortable would be the prick by the needle. Vice versa, more is the figure on the index, lesser would be the comfort level when the needle is pricked.

5. According to the complaint there was no scientific

basis to conduct, much less measure or certify the penetration test, and that the graph submitted by the first petitioner along with the tender was nothing but an act to defame the complainant and tarnish its image.

6. According to the petitioners the venepuncture comfort limit determined by the needle penetration test has a scientific basis and in Japan, where product of first petitioner was first manufactured, Japanese Industrial Standard for Injection Needle is specified and needle penetration test equipments are being manufactured and sold. It is further the case of the petitioners that the equipment is specifically designed for puncture testing of straight needles. It stated that the system measures how sharp is the head of the needle to penetrate tissues with minimum force. It is further explained by petitioners that a polyethylene membrane having 50 microns, equivalent to the skin tissue, is used as a skin substitute for penetration and the force of penetration gets automatically reflected on a graph when needle penetration test is carried out with the needle penetration test equipment. According to the petitioners, the graph in question has a scientific basis.

7. Question which arises for consideration would be, whether the graph submitted by the petitioners would be defamatory of the complainant and whether by submitting the graph, petitioners have adversely commented viz-a-viz quality of

the product of the complainant. If so is the comment actionable.

8. It is permissible in law for a manufacturer to highlight the qualities of its products and in so doing it is permissible for a manufacturer to refer to similar features in identical or near identical products of third parties. But, no disparaging remarks or comments can be made vis-a-vis products of others while so marketing ones products.

9. In relation to injunctive reliefs, in the decision reported as 1999 PTC (19) 741 *Reckitt and Colman of India Vs. M.P. Ramchandran & Anr.* 5 guiding principles were laid down. They are as under:-

> "I A tradesman is entitled to declare his goods to be best in the words even though the declaration is untrue.
>
> II He can also say that my goods are better than his competitors', even though such statement is untrue.
>
> III For the purpose of saying that his goods are the best in the world or his goods are better than his competitors' he can even compare the advantages of his goods over the goods of the others.
>
> IV He, however, cannot while saying his goods are better than his competitors', say that his competitors' goods are bad. If he says so, he really slanders the goods of his competitors. In other words he defames his competitors and their goods, which is not permissible.
>
> V If there is no defamation, to the goods or to the manufacturer of such goods no actions lies, but if there is such defamation, an action lies and if an action lies for recovery of damages for defamation, then the Court is also competent to grant an order of injunction restraining repetition of such defamation."

10. The aforesaid 5 principles have been followed with

approval in various subsequent judgments. I note but a few. The same are:-

1. 2003 (27) PTC 305 (Del) (DB) *Pepsi Co., Inc. and Ors. Vs. Hindustan Coca Cola Ltd. and Anr.*

2. 114 (2004) DLT 373 *Dabur India Ltd. Vs. Colgate Palmolive India Ltd.*

3. 104 (2003) DLT 490 *Reckit Benckiser (India) Ltd. Vs. Naga Ltd. & Ors.*

11. Principle 2 and 3 in the decision in *Reckitt & Colman*'s case (supra) guides that even though it may be untrue, a person is entitled to declare that his goods are better than those of his competitors and is also entitled to compare the advantages of his goods over the goods of others.

12. Unless the advertisement or comparison falls within the mischief of point No. 4, any advertisement pertaining to one's products and comparison thereof with the products of others would be non actionable.

13. Point No. 4 comes into operation where it is alleged that the goods of the competitor are bad, resulting in the tort of libel or slander. In other words, the competitor is defamed with reference to his goods.

14. In the instant case, petitioners have nowhere commented, much less adversely, on the goods of the complainant. Petitioners have merely projected what according to them is the result of the needle penetration test to determine the venepuncture comfort level.

15. I note that the petitioners justify the said test on a scientifically recognized norm and have explained the same, as noted hereinabove.

16. I fail to understand as to how the complainant would be defamed by the mere submission of the graph of the needle penetration test.

17. Under the circumstances, I hold that the complaint does not disclose an actionable cause much less attracting offence under Section 499/500 IPC.

18. The petition is allowed.

19. The complaint is quashed.

20. No costs.

October 04, 2007 **PRADEEP NANDRAJOG, J.**
MM